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No. 86-80

Supreme Court, U.S.

FILED

DEC 6 1986

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioner,

—against—

JOSEPH BURGER,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JOINT APPENDIX

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1a

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Chronological List of Relevant Proceedings

April 19, 1983	Defendant arraigned on Indictment Number 6972/82 in New York Supreme Court, Kings County.
May 12, 1983	Date of defendant's motion seeking, <i>inter alia</i> , to suppress physical evidence.
March 1, 1984	Hearing held on defendant's motion to suppress physical evidence.
April 12, 1984	Date of decision denying defendant's motion to suppress.
June 11, 1984	Date of decision after reargument adhering to denial of defendant's motion to suppress.
June 27, 1984	Defendant entered guilty plea.

August 15, 1984 Sentence imposed and judgment of conviction entered. Bail set pending determination of appeal to Appellate Division.

August 19, 1985 Judgment of conviction affirmed by Appellate Division, Second Judicial Department.

October 16, 1985 Leave to appeal to New York Court of Appeals granted, and bail continued.

May 8, 1986 Order of Appellate Division reversed by New York Court of Appeals, and case remitted to trial court for further proceedings.

INDICTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Indictment No. 6972/82

THE PEOPLE OF THE STATE OF NEW YORK

against

JOSEPH BURGER,

Defendant

COUNTS

CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND
DEGREE

(2 COUNTS)

CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE THIRD
DEGREE

(3 COUNTS)

VEHICLE AND TRAFFIC LAW SECTION 415.A.1

A TRUE BILL

ELIZABETH HOLTZMAN
District Attorney

/s/ Norma Davis
Foreman

FIRST COUNT

The Grand Jury of the County of Kings, by this Indictment accuse the defendant of the crime of Criminal Possession of Stolen Property in the Second Degree, committed as follows:

The defendant on or about November 17, 1982 in the County of Kings, with intent to benefit himself and a person other than an owner thereof, knowingly possessed stolen property, to wit: a 1974 Chevrolet Automobile vehicle identification number 1L47H4Y166437 and a 1982 Chevrolet transmission and automobile component parts vehicle identification number 2G1AL69J5C1136040, and is in the business of buying, selling and otherwise dealing in property.

SECOND COUNT

The Grand Jury of the County of Kings, by this indictment, accuse the defendant of the crime of Criminal Possession of Stolen Property in the Second Degree, committed as follows:

The defendant on or about November 17, 1982, in the County of Kings, with intent to benefit himself and a person other than an owner thereof and to impede the recovery by an owner thereof, knowingly possessed stolen property having an aggregate value of more than Two Hundred and Fifty Dollars, to wit: A wheelchair, serial number 6-114226, Care Co. #8999, owned by Julius Cohen.

THIRD COUNT

The Grand Jury of the County of Kings, by this indictment, accuse the defendant of the crime of Criminal Possession of Stolen Property in the Third Degree committed as follows:

The defendant on or about November 17, 1982, in the County of Kings, with intent to benefit himself and a person other than an owner thereof, and to impede the recovery by an owner thereof, knowingly possessed stolen property, to wit: A silver metal walker with wheels owned by Julius Cohen.

FOURTH COUNT

The Grand Jury of the County of Kings, by this indictment, accuse the defendant of the crime of Criminal Possession of Stolen Property in the Third Degree committed as follows:

The defendant on or about November 17, 1982, in the County of Kings, with intent to benefit himself and a person other than an owner thereof and to impede the recovery by an owner thereof, knowingly possessed stolen property, to wit: a 1982 Chevrolet automobile transmission and automobile component parts vehicle identification number 2G1AL69J5C1136040 owned by Julius Cohen.

FIFTH COUNT

The Grand Jury of the County of Kings, by this indictment, accuse the defendant of the crime of Criminal Possession of Stolen Property in the Third Degree committed as follows:

The defendant on or about November 17, 1982, in the County of Kings, with intent to benefit himself and a person other than an owner thereof and to impede the recovery by an owner thereof, knowingly possessed stolen property, to wit: a 1974 Chevrolet automobile vehicle identification number 1L47H4Y166437 owned by Mark Jacoby.

SIXTH COUNT

The Grand Jury of the County of Kings, by this indictment, accuse the defendant of the crime of Violation of Section 415-A.1 of the vehicle and Traffic Law committed as follows:

The defendant on or about November 17, 1982, in the County of Kings, engaged in the business of buying motor vehicles and trailers for the purpose of dismantling the same for the parts and reselling such vehicles as scrap, without having been issued a certificate of registration in accordance with the provisions of this section.

/s/ Elizabeth Holtzman
ELIZABETH HOLTZMAN
DISTRICT ATTORNEY

NOTICE OF MOTION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM

Ind. #6972/82

THE PEOPLE OF THE STATE OF NEW YORK

—against—

JOSEPH BURGER

Defendant

[Sections requesting relief unrelated to the issues
raised by the petition for certiorari have been deleted.]

PART IV

The defendant seeks a further Order, pursuant to CPL 710.20 subds. 1 & 4, precluding the People from introducing during the trial of this indictment any of the evidence, both tangible and intangible, obtained as a result of the police search of premises known as 5702 58th Street in Kings County on November 17, 1982, upon the grounds that such a search and seizure was made in violation of those of his rights as guaranteed by the Fourth and Fourteenth Amendments to the

United States Constitution and Article I, Sec. 12 of the New York State Constitution.

Dated: Kew Gardens, New York
May 12, 1983

Yours, etc.

MAHLER & HARRIS, P.C.
Attorneys for Defendant
Office & P.O. Address
125-10 Queens Boulevard
Kew Gardens, N. Y. 11415

TO:

HON. ELIZABETH HOLTZMAN
District Attorney of Kings County
Municipal Building
Brooklyn, New York

[The title of the case has been deleted.]

STATE OF NEW YORK)

: SS:

COUNTY OF QUEENS)

JOSEPH BURGER, being duly sworn, deposes and says:

That I am the above captioned defendant and make this affidavit in support of the instant motion.

[Allegations in support of requests for relief unrelated to the issues raised by the petition for certiorari have been deleted.]

PART IV

That on November 17, 1982, New York City police officers conducted a warrantless search of my business, an automobile junkyard located at 5702 58th Street in Kings County.

They did so without a warrant, without my consent, without probable cause to believe that there was criminal activity thereat, without exigent circumstances and in the absence of any of the other carefully defined exceptions to the legal principle that all warrantless searches are unlawful.

Moreover, if the police claim to have conducted the aforesaid search solely on the authority bestowed upon them by Ch.18, Sec. 436 of The New York City Charter and § 436-a(5) [sic; § 415-a(5)?] of the VTL, it is my contention that such statutes, as they apply to my premises, as they are drafted insofar as they authorize warrantless searches of business premises in general and, in this instance, in the manner in which they were executed, are unconstitutional and I request this Court to so hold.

WHEREFORE, it is respectfully requested that my motion be granted in its entirety and that I be afforded such other, further and different relief as to the Court may seem just, proper and equitable.

/s/ Joseph Burger
JOSEPH BURGER

Sworn to before me this
12th day of May, 1983

/s/ Stephen R. Mahler